IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20992 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GANDHI NAROTTAMDAS MADHAVJI SARVAJANIK CHHATRALAYA - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR PRASHANT MANKAD for Petitioner(s) : 1,MR JAGDISH H MEHTA for Petitioner(s) : 1,
MS ARCHNA RAVAL ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/11/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner trust has

challenged the legality and validity of the orders dated 1.5.2004 and 25.8.2005 passed by the Director, Scheduled Caste and Welfare Department, State of Gujarat and Joint Secretary, Social Justice and Empowerment Department respectively in canceling recognition of the Chhatralaya run by the petitioner trust at Unjha.

2. The petitioner trust was running Chhatralaya for the students belonging to the scheduled tribes community and the permissible strength was 20. The hostel was visited by the squad Officers on 8.7.2003 and it was found that against the permissible strength of 20 students and as per the Gruhpati, they have admitted 28 students from June, 2003. However, only three students were present and it was told that the some other three students had gone for tuition. However, at which place they had gone for tuition, was not submitted. It was found that even upto late night those students who have alleged to have gone for tuition, did not return. Thus, the authority was of the opinion that the institution is trying to mislead with regard to the students. It was also

found that the registers were not certified and even there was no register with the Grahpati. It was also found by the authority that the even after a period of one month, the list of the students who are granted admissions was not forwarded to the Department. Statements of the aforesaid three students were recorded and according to them, they are there since only last ten days and as per the Grahpati, admissions were given on 15.6.2003. Thus, it was found that against the admission strength of 28 students in number and 25 students were absent and no particulars were given as to who they are and from which village they belong and thus, it was found that there was no sufficient stock of one month and therefore, it was found that Chhatralaya is not running properly and therefore, a show cause notice was issued and the petitioner was directed to show cause as to why recognition of the Chhatralaya should not be cancelled. The Director of Scheduled Tribes and Welfare Department by its order dated 1.5.2004 cancelled the recognition of the Chhatralaya. Being aggreived and dissatisfied with the order passed by the Director dated 1.5.2004, the petitioner preferred

appeal before the Joint Secretary and the same also came to be dismissed by order dated 23.8.2005. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Shri Prashant Mankad, learned advocate appearing on behalf of the petitioner has vehemently submitted that the impugned orders are passed without giving proper opportunity to the petitioners and communication with regard to the last hearing was received by the petitioner on the same day on 23.8.2003 and immediately the petitioner sent Fax Message to the respondent No.1 followed by the request letter but inspite of that, the order came to be passed dismissing the appeal which is in breach of principle of natural justice. It is also further submitted by him that in the appeal memo itself it was so mentioned that as one ex-student has died, the students, Chawkidar and the Manager, Cook had gone for expressing condolence and therefore, no students were found. It was also further submitted by him that

the trust is very genuine trust which is working in the interest of scheduled caste / tribes students and even some past students have also become Doctors and therefore, it is requested either to allow the present Special Civil Application and / or to remand the matter to the appellate authority for deciding the same afresh as according to him, the same is in breach of principle of natural justice.

4. Ms.Archana Rawal, learned AGP while supporting the orders passed by both the authorities below has submitted that ample opportunities were given to the petitioner to represent their case before the first authority as well as the appellate authority but for one reason or the other nobody remained present on behalf of the petitioner and there was no representation at all. It is submitted that so far as hearing before the Director is concerned, representative / petitioner was permitted to appear on 18.8.03, 1.9.03, 15.9.03, 29.9.03, 20.10.03, 11.11.03, still nobody remained present on behalf of the petitioner trust. Similarly, even before the appellate authority also, though the matter was

adjourned for seven times, nobody remained present on behalf of the petitioner and therefore, it is not open for the petitioner to contend that the impugned orders are in breach of principle of natural justice. It is submitted that when permission was granted to run hostel for the benefit of the students belonging to the scheduled cast / tribe community, the benefit must reach to them and as it is found that the Chhatralaya was not running properly and which was not in the interest of the students of the scheduled tribe community, both the authorities are justified in cancelling the recognition of the Chhatralaya and therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is required to be noted that on the inspection by the checking squad on 8.7.2003, against the permissible strength of 20 students, as per the Grahpatti 28 students were granted admissions from June, 2003. However, at the relevant time only three

students were found present. Though it was submitted that the other three students had gone for tuition, nothing was mentioned at which they had gone for tuition. Not only that but the squad officer waited till late night but students did not return. It is also found by the authority that no particulars are given with regard to the students who are alleged to have been admitted who are they and from which village they are coming and from which date they are in the hostel. The contention in the appeal memo that as one past student had expired suddenly, everybody had gone for condolence meeting, cannot be accepted as it has come on record that even the checking squad waited till late night. Shri Mankad, learned advocate for the petitioner is not in a position to submit and / or give particulars with regard to the students who were alleged to have been admitted and they were studying in which standard. Even in this petition it is not denied or disputed by the petitioner with regard to the finding given by the first authority as well as the appellate authority with regard to only three students present out of 28 students alleged to have been given admission. It is also not disputed in

the petition with regard to the stock register not maintained and / or nor the same was produced. From the record it appears that ample opportunities were given to the petitioner to represent their case before the first authority as well as even before the appellate authority, however, for one or the another reasons the management prayed for adjournment and did not remain present. Under the circumstances, it is not open for the petitioner to make grievance for passing order by the authorities in absence of the petitioner management. If opportunities are given and the management does not avail of the same, it is not open for the petitioner trust to raise contention with regard to breach of principle of natural justice. Even considering the aforesaid facts and circumstances, the authorities are justified in cancelling registration of the Chhatralaya as the purpose and object for which the recognition to run chhatralaya for students belong to the scheduled caste / tribes community is granted, is not fulfilled and / or achieved and therefore, no interference is required at the hands of this Court exercising the powers under Article 226 of the Constitution of India

and as such, no illegality has been committed by any authority below.

7. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed.

Notice is discharged with no order as to costs.

[M.R.Shah, J.]

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